

**IN THE SUPREME COURT AND COURT OF APPEALS
STATE OF MISSISSIPPI**

No.: 2014-TS-00585

STEVEN JACOB MAHAFFEY

APPELLANT

v.

WILLIAM CAREY UNIVERSITY

APPELLEE

APPEAL FROM THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

Oral Argument is not requested

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CERTIFICATE OF INTERESTED PERSONS

Steven Jacob Mahaffey v. William Carey University
No. 2014-TS-00585

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges may evaluate possible disqualification or recusal:

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I. ISSUES

Pursuant to Rule 10(b)(4) of the Mississippi Rules of Appellate Procedure, the Appellant's Statement of the Issues, filed on May 2, 2014, are:

1. Whether the trial court abused its discretion in determining that no genuine issue of material fact existed in granting William Carey University's Motion for Summary Judgment.
2. Whether the trial court was manifestly wrong in granting summary judgment against Mahaffey, despite genuine issues of material fact.
3. Whether the trial court abused its discretion in finding that William Carey University did not deviate from its established procedures in disciplining and dismissing Mahaffey.
4. Whether the trial court erred and abused its discretion in holding that William Carey had followed its handbook in dismissing Mahaffey.
5. Whether the trial court abused its discretion in finding that William Carey University's dismissal was carried out with fundamental fairness.

Appellee objects to the "Issues" outlined in Appellant's Brief as they alter or add to the issues originally designated by the Appellant. Specifically, issues 3, 4, 5, 6, and 7 in Appellant's Brief are unrelated to and distinctly different from the Appellant's Statement of the Issues identified at the time of filing the Notice of Appeal.

Appellee moves the Court to strike or otherwise refuse to consider any Issues presented in Appellant's Brief which do not coincide with Appellant's May 2, 2014 Statement of the Issues.

II. COURSE OF PROCEEDINGS

Mr. Mahaffey initiated this matter on August 28, 2013, with the filing of a Complaint against William Carey University. He alleged breach of contract (R000005-000078) and requested a preliminary injunction (R000009-000010). William Carey University filed its Answer and Defenses, and moved to dismiss the request for preliminary injunction. After considering the briefs and arguments of counsel at a hearing on the motion to dismiss, Chancellor Ron Doleac dismissed Mr. Mahaffey's request for preliminary injunction on September 20, 2013 (R000002). Mr. Mahaffey thereafter filed an Amended Complaint on September 20, 2013, to assert a request for a mandatory injunction (R000089-000097). William Carey University's Answer to the Amended Complaint (R000098-000110) presented affirmative defenses, specifically that Mr. Mahaffey could not meet the requirements for a mandatory injunction, and that any such injunction would be inconsistent with the public interest (R000098-000099, citing *Pearman v. Wiggins*, 60 So. 1 (Miss. 1912), and *A-1 Pallet Co. v. Ciity of Jackson*, 40 So.3d 563 (Miss. 2010)).

After the closure of the pleadings, discovery yielded several hundred pages of records, including the Student Handbook applicable to Mr. Mahaffey, and the depositions of several witnesses. The Student Handbook specifically defined probation as: "a warning that any future behavior/situations inconsistent with the professional behavior outlined in the student handbook or deemed inappropriate by the Promotion and Matriculation Committee may result in his or her immediate expulsion from the college." (R000041-000042, and 000298, emphasis added). The handbook defined "probation with conditions" to include "all of the sanctions of probation," plus additional obligations set by the Promotion and Matriculation Committee. (R000042 and 000298).

During his deposition, Mr. Mahaffey admitted to consulting the Student Handbook's definition of "probation" after he was put on probation with conditions in 2012. (R000940-000941).

He admitted that he understood the definition of probation when he was placed on probation, and he was told that his probation was “zero tolerance for any future conduct” by Dr. Darrell Lovins, then Dean of the College of Osteopathic Medicine. (R000941-000942).

The University filed a Motion for Summary Judgment which argued that Mr. Mahaffey could not show that the University was arbitrary and capricious in its dismissal of Mr. Mahaffey. (R000111-000586). Mr. Mahaffey responded with his own Motion for Summary Judgment. (R000587-000931). Chancellor M. Ronald Doleac heard arguments in support of motions on March 21, 2014. (T1-56). The Chancellor ruled that Mr. Mahaffey’s dismissal was carried out with fundamental fairness, was not arbitrary or capricious, and did not deviate from the University’s established procedures. (T54-55). The trial court entered its Order of Final Judgment on March 25, 2014. (R000943-000944).

III. STATEMENT OF THE FACTS

A. The Student Handbook

Mr. Mahaffey began classes at William Carey University’s College of Osteopathic Medicine (COM) on August 23, 2010. (R000299). William Carey University is a private university in Hattiesburg, Mississippi. Under the COM’s Student Handbook, professionalism is one of the COM’s core values, and each student “is to display professionalism at all times in and out of the classroom.” (R000294). The Student Handbook lists examples of professionalism, including professional competence, honesty, compliance with patient confidentiality, and embracing professional responsibilities. (R000294). The Handbook goes on to describe examples which violate professionalism, such as showing a lack of respect towards faculty and staff, and academic dishonesty. (R000295).

The role of the Promotion and Matriculation Committee is to evaluate student eligibility for promotion to the succeeding year, but the Committee “also considers reports concerning attendance, conduct, and potential professional attributes.” (R000037-000038). In addition to disciplining students for academic issues, “probation or suspension may be required... for any student who fails to maintain ethical, moral, personal, or professional conduct...” (R000038).

A complaint regarding a student’s professional behavior is filed with the chairperson of the Promotion and Matriculation Committee, and the Committee determines whether a meeting with the student is necessary. (R000041 and 000297). If a meeting with the student is warranted, the Committee delivers notice to the student. (R000041 and 000297). After consideration, the Committee then communicates its decision to the student, which may include no action, probation, probation with conditions, or dismissal. (R000041-000042, and 000298).

Once a student is placed on probation or probation with conditions, “any future behavior/situations inconsistent with the professional behavior outlined in the student handbook or deemed inappropriate by the Promotion and Matriculation Committee may result in his or her immediate expulsion from the college.” (R000041-000042, and 000298).

B. Enrollment to Probation (August 2010 - February 2012)

Mr. Mahaffey received a verbal warning from Dr. Jim Weir, the Associate Dean of Student Affairs, on September 14, 2010, after Mr. Mahaffey made inappropriate comments in the presence of female students. (R000299). On November 1st, Dr. Weir verbally counseled Mr. Mahaffey for unprofessional behavior. (R000300). On January 14, 2011, Dr. Weir counseled Mr. Mahaffey again for additional incidents, including sending emails to Dr. Darrell Lovins, then Dean of the COM, regarding rotations, failing to perform his work in anatomy labs, and improperly lobbying professors

for grade changes. (R000300). Dr. Weir told Mr. Mahaffey at that time that he now had two strikes, and that a third strike would result in action by the Promotion and Matriculation Committee. (R000228).

Mr. Mahaffey persisted in attempting to schedule his own rotations in August and September 2011. (R000231). Mr. Mahaffey also contacted the COM's eBook vendor, Vital Source, to set up private access to medical textbooks and board study materials, and to question the costs charged by Vital Source. (R000300, 000306, and 000307). On September 29, 2011, the Promotion and Matriculation Committee reviewed Mr. Mahaffey's continued attempts to schedule his rotations and his contact with the school's eBook vendor. (R000233-000235, 000300, and 000310). On October 10, 2011, the Committee decided not to take punitive action, but instructed Dr. Weir to tell Mr. Mahaffey that the Committee discussed his improper professional behavior and would possibly take action for any future inappropriate behavior. (R000233-000235, 000300, and 000310).

Mr. Mahaffey continued to attempt to set his rotations schedule by emailing Dr. Turner for a rotation at a hospital in New Orleans, Louisiana, on October 23, 2011. (R000236-000237). On November 18, Jaime Hill, the Director of Clinical Rotations at the COM, advised Dr. Turner that she spoke with personnel at The Hattiesburg Clinic regarding Mr. Mahaffey. (R000336, and 000357). Mr. Mahaffey called the Director of Credentialing at The Hattiesburg Clinic, and insisted on receiving forms to set up his rotations, independent of the process established by the COM. (R000336 and 000357).

In December 2011, Mr. Mahaffey discussed his desire to scrub in on surgeries with Dr. Turner, but was told that he could not scrub in on a surgery because there was no malpractice insurance coverage for Mr. Mahaffey. (R000336, 000337, and 000358). Further, Mr. Mahaffey was told that he had not been trained on how to "gown and glove", or properly sanitize himself for a

surgical setting. (R000336, 000337, and 000358). Despite these instructions, Mr. Mahaffey went to the Outpatient Surgery Center at Hattiesburg Clinic on December 20, 2011, and confronted Karen Smith, Director of Nursing at the Outpatient Surgery Center, to demand that he be allowed to scrub in on a surgery. (R000337, 000358, and 000359). She told him no, and that it was their policy not to allow any student to scrub in on surgeries. (R000358 and 000359).

Mr. Mahaffey then told Ms. Smith that he had been trained to gown and glove and that he was covered by malpractice insurance through the COM. (R000358 and 000359). Ms. Smith reported that Mr. Mahaffey would not stop in his demands to scrub in on a surgery and would not take “no” for an answer. (R000358 and 000359). After his fifth request was denied by Ms. Smith, Mr. Mahaffey walked into the surgical suite without any precaution as surgery was about to begin. (R000358 and 000359). Mr. Mahaffey was asked to leave and escorted from the building. (R000358 and 000359). Mrs. Smith reported the incident to Jamie Hill at the COM. (R000358 and 000359). Mrs. Hill informed Mrs. Smith that the COM was unaware that Mr. Mahaffey would attempt to scrub in on surgery, and acknowledged that his actions harmed the relationship between the Clinic and the COM. (R000358 and 000359).

Mrs. Hill advised Dr. Turner and Dr. Lovins of Mr. Mahaffey’s behavior at the Hattiesburg Clinic. (R000358). Dr. Weir forwarded reports of Mr. Mahaffey’s surgery center incident to the Promotion & Matriculation Committee. (R000300-000301 and 000311-000313). In an email from Mr. Mahaffey, he admitted to attempting to shadow despite being aware he was untrained to scrub in: “I was hoping that I would be able to scrub in...” (R000337 and 000360).

On January 5, 2012, notice was sent to Mr. Mahaffey to attend the next Promotion & Matriculation Committee meeting. (R000244). On January 6, 2012, Dr. Porter, Chair of the Promotion & Matriculation Committee, met with Mr. Mahaffey to address the issues to be discussed

in the upcoming meeting. Mr. Mahaffey later emailed Dr. Porter and admitted that his “unprofessional attitude” compromised his dream of becoming a physician. (R000247).

On January 10, 2012, the Promotion and Matriculation Committee met with Mr. Mahaffey and considered the evidence regarding Mr. Mahaffey’s behavior. (R000249-000251, 000320-000322, and 000323-000325). According to the Committee’s minutes, Mr. Mahaffey apologized to the Committee and answered questions about his behavior. (R000250, 000320-000322, and 000323-000325). The Committee recommended that Mr. Mahaffey should be placed on probation with certain conditions: 1) that Mr. Mahaffey receive counseling from an appointed counselor; 2) that only Dr. James Turner would dictate all rotations for Mr. Mahaffey; 3) that Mr. Mahaffey address any concerns regarding any outside entity and his education at the COM directly with Dr. Turner; and 4) that Mr. Mahaffey meet with Dr. Weir monthly until August 2012 and thereafter with Dr. Turner. (R000250-000251, 000320-000322, and 000325). The Committee finally noted that this was a zero tolerance probation and that any further violation would result in his immediate dismissal. (R000251, 000320-000322, and 000325; see also R000940-000941, R00041-00042, and 000298).

On January 23, 2012, Dean Lovins met with Mr. Mahaffey and discussed the Committee’s findings and its recommendations and findings in detail. Dean Lovins told Mr. Mahaffey that the probation was “zero tolerance” and that any further violation would result in his dismissal from the COM. (R000941-000942). A letter from the Dean to Mr. Mahaffey on February 16, 2012, gave Mr. Mahaffey notice of his probation. (R000252). Mr. Mahaffey consulted the Student Handbook’s definition of probation and its potential consequence of immediate dismissal for any violation of professional conduct. (R000940-000941; see also R00041-00042 and 000298).

C. Probation to Dismissal (March 2012 - July 2013)

In March and April 2012, Mr. Mahaffey independently contacted preceptors to attempt to schedule his own rotations. (R000253-000254). Mr. Mahaffey continued to try to control his rotations schedule without speaking with Dr. Turner throughout 2012 and into January 2013. (R000262-000268 and 000341-000342).

On July 27, 2012, Dr. Lori Dolinski, Director and Chairperson of Boards Boot Camp, a vendor of medical board exam preparation materials, notified Dr. Turner of “innumerable” emails from Mr. Mahaffey to Boards Boot Camp, which Dr. Dolinski described as inappropriate. (R000255-000256). As a result, the vendor blocked all of Mr. Mahaffey’s emails. (R000256).

On August 1, 2012, Mr. Mahaffey began rotations at South Central Regional Medical Center in Laurel, Mississippi. During orientation, Mr. Mahaffey improperly parked his car in the hospital parking lot after being specifically told not to do so, and was observed using Facebook and sending text messages on his phone during orientation. (R000257-000259).

On August 8, 2012, Dean Lovins asked the Promotion and Matriculation Committee to research Mr. Mahaffey’s continued unprofessional conduct. (R000260). Dean Lovins also referenced irregularities with Mr. Mahaffey’s counseling requirement. Mr. Mahaffey had been seeing a specific counselor pursuant to his probation, but Mr. Mahaffey called the counseling office and made an appointment with another counselor. (R000260). On August 22, 2012, Dean Lovins sent a letter to Mr. Mahaffey requesting his attendance at the Promotion and Matriculation Committee meeting on August 29, 2012, to discuss these recent professionalism issues. (R000261). This meeting was subsequently cancelled due to a hurricane and to allow Mr. Mahaffey to take his board exam.

Beginning in August 2012, Mr. Mahaffey participated in rotations and recorded the procedures he performed in procedure logs. In October 2012, Mr. Mahaffey and Jamie Hill, the COM's Director of Clinical Rotations, spoke at length about how Mr. Mahaffey should complete his procedure logs for his rotations. (R000265). Before his pediatrics rotation, Mr. Mahaffey's grades confirmed his ability to accurately complete procedures logs, including those completed previously at South Central Regional Hospital in Laurel, Mississippi. (R000424-000426 and 000748).

From March 1 to March 31, 2013, Mr. Mahaffey participated in a pediatrics rotation with Dr. Christine Chard in Laurel, Mississippi. On March 26, 2013, the Promotion and Matriculation Committee considered taking Mr. Mahaffey off probation. (R000269, 000320-000322, and 000326-000328). However, this motion was not seconded, and Mr. Mahaffey remained on probation.

Mr. Mahaffey submitted his procedure logs on April 4, 2013, to Dr. Chard. (R000343). Dr. Chard found that Mr. Mahaffey's logs contained procedures which were never performed by Mr. Mahaffey, and she refused to sign and approve Mr. Mahaffey's logs. (R000274-000275, 000343, and 000387-000445). Dr. Chard also gave Mr. Mahaffey a failing grade for his rotation. (R000343 and 000446-000449). Mr. Mahaffey's grade was based on his logs, Mr. Mahaffey's failure to "catch on and learn" during his rotation, and his failure to follow directions from doctors and staff. (R000446-000449). Dr. Chard's evaluation noted one occasion where she told Mr. Mahaffey to wait in the doctors' lounge before he attended a caesarian section. (R000449). Instead, Mr. Mahaffey left the hospital, drove to Hattiesburg to get something to eat, and missed the entire procedure. (R000449).

On April 5, 2013, Dr. Longenecker reviewed Mr. Mahaffey's logs and Dr. Chard's evaluation of his pediatrics rotation. (R000271, 000525, and 000526). Dr. Longenecker notified Dr. Porter as Chair of the Promotion and Matriculation Committee that Mr. Mahaffey failed his pediatrics

rotation, had falsified his pediatric rotation logs, and that Dr. Longenecker would meet with him. (R000271, 000525, and 000526). On April 12th, Dr. Longenecker informed Mr. Mahaffey that he had failed his pediatrics rotation and discussed the issues with his procedures logs. (R000526). Both Dr. Longenecker and Dr. Weir met with Mr. Mahaffey to discuss his procedure logs, and Dr. Longenecker drafted a written report to Mr. Mahaffey regarding the logs. (R000526 and 000353-000355). Dr. Longenecker noted numerous procedures recorded by Mr. Mahaffey, such as psychological histories and sexual maturity ratings, which would not have been performed by Mr. Mahaffey during a pediatrics rotation. (R000526 and 000353-000355).

The Promotion and Matriculation Committee convened on April 17, 2013, to review Mr. Mahaffey's conduct. (R000321 and 000343). The Committee unanimously voted for Mr. Mahaffey to be dismissed from the COM. (R000194-000195). On May 13, 2013, the Promotion and Matriculation Committee met again and reaffirmed its recommendation to dismiss upon a finding that Mr. Mahaffey failed to meet the requirements of his probation. (R000276). Mr. Mahaffey received written notification of his dismissal on May 16, 2013. (R000277). This initial letter stated that Mr. Mahaffey could not appeal his dismissal, but a second letter was issued on May 23, 2013, advising Mr. Mahaffey that he could appeal his dismissal to the Dean. (R000278). The appeal hearing was scheduled and rescheduled at Mr. Mahaffey's request. (R000344).

Prior to the meeting scheduled for the appeal, Mr. Mahaffey violated his patients' confidentiality and the Health Insurance Portability and Accountability Act when he requested patients' medical records in preparation for his appeal. (R000344). Dr. Turner received a copy of Mr. Mahaffey's emailed request for medical records which confirmed the violation. (R000344 and 000456-000458).

On June 25, 2013, Mr. Mahaffey appeared before a panel of faculty and administration, including Dr. Turner, for the appeal of his dismissal. (R000345, 000287, 000291, and 000288). To support his request for lesser sanctions, Mr. Mahaffey produced a 72-page appeal letter, with exhibits. (R000345 and 000673-000740). Mr. Mahaffey also provided an oral statement, and he responded to questions from the panel. (R000287, 000291, and 000288). After careful review of all of the evidence and the written appeal submitted by Mr. Mahaffey, Dean Turner sent Mr. Mahaffey a letter on July 1, 2013, denying the appeal and upholding the decision to dismiss Mr. Mahaffey. (R000345 and 000289). Mr. Mahaffey's dismissal was subsequently affirmed by Dr. Tommy King, President of William Carey University.

IV. SUMMARY OF THE ARGUMENT

The decision to grant William Carey's Motion for Summary Judgment was not an abuse of discretion. *Beauchene v. Mississippi College*, 986 F.Supp. 2d 755 (S.D. Miss. 2013) provides the standard for reviewing a private university's disciplinary dismissal of a student. Chancellor Doleac specifically cited *Beauchene* and tracked the case's language when he issued his ruling on William Carey's Motion for Summary Judgment.

Mr. Mahaffey's unprofessional conduct was exhibited throughout his entire attendance at William Carey University. After being placed on probation, additional incidents of unprofessionalism occurred. Finally, Mr. Mahaffey was cited for unprofessional conduct during his pediatrics rotation and for falsifying his procedure logs. After turning in accurate logs for prior rotations, Mr. Mahaffey submitted false logs to his pediatrics preceptor when he presented a log which listed procedures which had never been performed. Mr. Mahaffey's behavior during the

rotation and his falsified logs surpassed any academic issue and were a severe violation of the professional standards of the COM.

Mr. Mahaffey's professional misconduct during his pediatrics rotation occurred while he was on probation with conditions. Mr. Mahaffey knew that the Student Handbook required him to maintain the COM's professional standards during his probation, or risk immediate expulsion. The Dean of the COM told Mr. Mahaffey that his probation was "zero tolerance". After the COM learned of his behavior during his pediatrics rotation, Mr. Mahaffey knew that the Promotion and Matriculation Committee was reviewing his conduct. (R000526). The Committee met twice and determined to dismiss Mr. Mahaffey for his failure to meet the COM's professionalism standards. Mr. Mahaffey appealed the Committee's recommendation for dismissal to the Dean of the COM and to the President of William Carey University.

Although the Student Handbook disclaims any contractual relationship with students, William Carey University followed the procedures in the handbook to determine the nature of Mr. Mahaffey's behavior and a fitting response. The argued errors of the court suggested by the Appellant involve immaterial facts or a misreading of the trial court's ruling. If any error exists, such error is inconsequential and does not warrant remand.

V. ARGUMENT

A. Courts must not interfere with the disciplinary decisions of private universities, except to determine if the decisions rendered were arbitrary and capricious.

A trial court's grant of summary judgment is reviewed *de novo*. *Pursue Energy Corp. v. Mississippi State Tax Comm.*, 698 So.2d 368, 372 (Miss. 2007) (quoting *Gregory v. Cent. Sec. Life Ins. Co.*, 953 So.2d 233, 238 (Miss. 2007)). Summary judgment is granted only when there is no

genuine issue of material fact to be decided and the moving party is therefore entitled to judgment as a matter of law. *Id.* (citing *Id.* (quoting *Moore ex rel. Moore v. Mem'l Hosp. of Gulfport*, 825 So.2d 658, 663 (Miss. 2002))).

In disputes involving the decisions of universities, “judicial intervention in any form should be undertaken only with the greatest reluctance.” *University of Mississippi Medical Center v. Hughes*, 765 So.2d 528, 532 (Miss. 2000) (citing *Regents v. Ewing*, 474 U.S. 214, 226, 106 S.Ct. 507, 514, 88 L.Ed.2d 523 (1985) (parenthetical omitted)). Judicial intervention should be undertaken reluctantly “especially regarding degree requirements in the health care field when the conferral of a degree places the school's imprimatur upon the student as qualified to pursue his chosen profession.” *Id.* (citing *Jansen v. Emory Univ.*, 440 F.Supp. 1060, 1062–63 (N.D. Ga.1977), *aff'd*, 579 F.2d 45 (5th Cir.1978)).

The reluctance of courts to engage the disciplinary decisions is heightened where a private institution is involved. Courts give great discretion to the decisions of private institutions. *Beauchene v. Mississippi College*, 986 F. Supp. 2d 755, 768 (S.D. Miss. 2013) (citing *State v. Schmid*, 84 N.J. 535, 567, 423 A.2d 615, 632 (N.J. 1980); and *Ahlum v. Administrators of Tulane Educ. Fund*, 617 So.2d 96, 98 (La. Ct. App. 1993), *writ denied sub nom.*, 624 So.2d 1230 (La. 1993)). Due process protections of the Fourteenth Amendment “are not available to students enrolled in private colleges and universities”. *Beauchene v. Mississippi College*, 986 F. Supp. 2d 755, 767-68 (S.D. Miss. 2013) (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 837, 102 S.Ct. 2764 (1982); and *NCAA v. Tarkanian*, 488 U.S. 179, 191, 109 S.Ct. 454 (1988)). Litigation against private colleges is “usually limited to only breach of contract claims.” *Id.* (citing *Id.* and *Blouin v. Loyola Univ.*, 506 F.2d 20 (5th Cir. 1975)).

In *Beauchene*, the Court reviewed a student's academic dismissal by a private law school to "determine whether MC Law's procedures were carried out with fundamental fairness so as to ensure that the decisions rendered were not arbitrary and capricious." *Id.* at 769 (citing *Hughes*, 765 So. 2d at 535.) The district court cited *Ahlum v. Administrators of Tulane Education Fund* for the standard for reviewing a "disciplinary decision": "The disciplinary decisions of a private school may be reviewed for arbitrary and capricious actions." *Id.* (*Ahlum*, 617 So.2d at 99) (citations omitted).

In defining the arbitrary and capricious standard as it applies to a private institution, "the Court may look to the degree in which MC Law deviated from its established procedures and whether there was substantial evidence to support its decisions." *Id.* (citing *Napolitano v. Trustees of Princeton University*, 186 N.J.Super. 548, 453 A.2d 263 (N.J. 1982); *Ahlum*, 617 So. 2d at 99; and *Boehm v. Univ. Pennsylvania Sch. of Veterinary Med.*, 392 Pa.Super. 502, 511, 573 A.2d 575, 580 (Pa. 1990)).

B. Mr. Mahaffey is estopped from appealing the existence of genuine issues of material fact.

In response to William Carey's Motion for Summary Judgment, Mr. Mahaffey responded with his own Motion for Summary Judgment. (R000587-000931). Mr. Mahaffey argued that summary judgment should be granted in his favor because there were no disputed issues of material fact. (R000600-000601, citing Miss. R. Civ. P. 56, and 000611). Mr. Mahaffey presented an extensive "Itemization of Undisputed Facts" (R000588-000600) from which Mr. Mahaffey concluded that he was entitled to judgment as a matter of law for an injunction to reverse the COM's dismissal, and for damages for lost wages and other compensatory damages. (R00611).

Judicial estoppel prevents a party from assuming a position at one stage of a proceeding and then taking a contrary stand later in the same litigation. *Pursue Energy Corp.*, 968 So.2d 368, 377

(quoting *Dockins v. Allred*, 849 So.2d 151, 155 (Miss.2003) (citing *Banes v. Thompson*, 352 So.2d 812, 815 (Miss.1977)). Pursue Energy argued on appeal that the chancellor erred in granting summary judgment against Pursue Energy because there existed genuine issues of material fact. *Id.* The Supreme Court rejected this argument because Pursue Energy had filed its own cross motion for summary judgment:

Pursue cannot, on the one hand, file its own motion for summary judgment asserting that there was no genuine issue as to any material fact and that it was entitled to a judgment as a matter of law, while on the other hand, arguing on appeal that the chancellor erred in granting the Commissioner's motion for summary judgment, since there did exist genuine issues of material facts, causing summary judgment to be improper.

Id.

Thus, Mr. Mahaffey is judicially estopped from claiming the chancellor erred in failing to find genuine issues of material fact because Mr. Mahaffey's cross motion for summary judgment claimed exactly the opposite - that there were no genuine issues of material fact.

C. There is no dispute that the COM dismissed Mr. Mahaffey during his probation.

At the beginning of April 2013, Mr. Mahaffey had been on probation with conditions for over one year. Per the Student Handbook, the conditions of his probation included "any future behavior/situations inconsistent with the professional behavior outlined in the student handbook or deemed inappropriate by the Promotion and Matriculation Committee may result in his or her immediate expulsion from the college." (R00041-00042 and 000298). [Emphasis added]. The Student Handbook lists examples of professionalism, including professional competence, honesty, compliance with patient confidentiality, and embracing professional responsibilities. (R000294). Mr. Mahaffey stated that he specifically referred to the definition of probation in the handbook after

being placed on probation in 2012. (R000940-000941). He also stated that Dr. Lovins told him that his probation was subject to “zero tolerance for any future conduct”. (R000941-000942).

Mr. Mahaffey’s behavior during his pediatrics rotation violated several examples of professionalism set out in the handbook. Mr. Mahaffey failed to exhibit professional competence as determined by his preceptor. (R000449). Mr. Mahaffey failed to embrace professional responsibilities by completely missing a caesarean section procedure to go out to eat in Hattiesburg. (R000449). He submitted false procedure logs to his preceptor and to the COM. (R000526 and 000353-000355). In attempting to defend his actions during the rotation, Mr. Mahaffey failed to comply with patient confidentiality by seeking the disclosure of personal identification and medical information of his patients. (R000344 and 000456-000458).

Mr. Mahaffey’s performance during his pediatrics rotation warranted his academic failure, according to Dr. Chard, but Dr. Chard did not dismiss him from the COM. It is undisputed that the Promotion and Matriculation Committee dismissed Mr. Mahaffey because his actions during his pediatrics rotation violated the COM’s standards of professionalism. It is undisputed that Mr. Mahaffey knew he could be immediately dismissed for any unprofessional action during his probation.

D. The trial court did not err in ruling that the COM’s actions were not arbitrary or capricious.

William Carey University is a private institution, and the actions of William Carey University are reviewed to ensure that Mr. Mahaffey’s dismissal was not arbitrary or capricious. See *Beauchene*, 986 F.Supp.2d 755, 769 (citing *Ahlum*, 617 So.2d at 99). The trial court considered the degree in which the COM deviated from its established procedures and whether there was substantial evidence

to support its decision to dismiss Mr. Mahaffey. See *Id.* (citing *Id.*). Summary judgment was warranted because no evidence showed that the university acted arbitrarily and capriciously in dismissing Mr. Mahaffey (T56:1-11).

Although the case involved an academic dismissal for plagiarism, *Beauchene* examined the judicial review of a disciplinary dismissal. In comparison with disciplinary dismissals for student misconduct, universities are given greater deference for academic dismissals. *Beauchene*, 986 F.Supp.2d 755, 768 (citing *Hughes*, 765 So.2d at 534 (“A disciplinary dismissal requires that the student be given oral or written notice of the charges and evidence against him and the opportunity to present his side of the story...”)), and quoting *Senu-Oke v. Jackson State Univ.*, 521 F.Supp.2d 551, 559 (S.D. Miss. 2007) (quoting *Shaboon v. Duncan*, 252 F.3d 722, 731(5th Cir. 2001)) (“...all that is required for disciplinary actions is an ‘informal give-and-take’ between the student and the administrative body dismissing him that would, at least, give the student ‘the opportunity to characterize his conduct and put it in what he deems the proper context.’”)(emphasis of parenthetical added). It is the language from *Senu-Oke* regarding a disciplinary dismissal, as quoted in *Beauchene*, that the trial court directly quoted at several points in its ruling from the bench. (T51:18-27, 52:20-27, and 53:2-7).

Additionally, *Beauchene* cited *Ahlum v. Tulane* to illustrate that “a private institution has almost complete autonomy in controlling its internal disciplinary procedures.” A private university’s power is not absolute, and “the disciplinary actions of a private school may be reviewed for arbitrary and capricious action.” *Beauchene*, 986 F.Supp.2d 755, 769 (citing *Ahlum*, 617 So.2d at 99). *Beauchene* later relied on the definition of “arbitrary and capricious” in *Ahlum*: “the Court may look to the degree in which MC Law deviated from its established procedures and whether there was substantial evidence to support its decisions.” *Beauchene*, 986 F.Supp.2d 755, 769 (citing

Ahlum, 617 So.2d. at 99 (“stating that a decision is capricious when it is made ‘without substantial evidence’ and arbitrary when it disregards the weight of evidence”) (additional citations omitted)). The trial court also relied on this language from *Ahlum* and *Beauchene* in its ruling from the bench. (T52:13-19, 55:1-8, and 56:1-9).

Mr. Mahaffey presented the Student Handbook as evidence of a contract. Yet the alleged contract attached to the Complaint expressly disclaimed the existence of any contract and stated that its policies, requirements, and information may be updated from time to time by the COM at its sole discretion. (R000013). Despite not being a contract, the COM followed the procedure outlined in the handbook for the dismissal of Mr. Mahaffey.

The COM gave Mr. Mahaffey numerous verbal and written warnings, and counseled him to act at all times in a professional and respectful manner. Mr. Mahaffey’s attempts to shadow a surgery at the Hattiesburg Clinic without proper training or permission led to his probation with conditions in 2012. Before and during the hearing in January 2012, Mr. Mahaffey received ample opportunity to formally explain his behavior.

While on probation, Mr. Mahaffey knew that any violation of the COM’s professional standards could result in his immediate expulsion. Mr. Mahaffey’s unprofessional behavior continued and culminated during his pediatrics rotation in March 2013. He repeatedly failed to follow his preceptor’s instructions and submitted patient logs with procedures that were not performed. The Promotion and Matriculation Committee then determined to review Mr. Mahaffey’s conduct during his pediatrics rotation. Mr. Mahaffey met with Dr. Longenecker and Dr. Weir to discuss the professionalism issues raised by Mr. Mahaffey’s actions. (R000526 and 000353-000355).

Based on Mr. Mahaffey’s past behavior and his probationary status, Mr. Mahaffey’s presence was not requested at the meetings concerning his conduct during the pediatrics rotation. (R000321

and 000343). The Promotion and Matriculation Committee met twice to review the evidence, including the statements from Mr. Mahaffey's preceptor, Dr. Chard, and Dr. Longenecker's review of his rotations logs. (R000194-000195 and 000276). After both meetings, the Committee recommended that Mr. Mahaffey be dismissed for his unprofessionalism. (R000194-000195 and 000276). The COM then permitted Mr. Mahaffey to appeal his dismissal to Dean Dr. Turner. (R000278). At his appeal, Mr. Mahaffey presented a 72-page written statement, explained his actions and answered questions from the appeals panel. (R000345 and 000673-000740). After due consideration of Mr. Mahaffey's prepared written statement, his statements at the appeal hearing, and the facts of the case, Dr. Turner affirmed Mr. Mahaffey's dismissal. (R000345 and 000289).

Mr. Mahaffey's dismissal was not arbitrary or capricious because his probationary status subjected him to immediate dismissal for any violation of the COM's professionalism standards. Even if Mr. Mahaffey were not on probation, his presence before the Promotion and Matriculation Committee was not mandated by the Student Handbook. The Committee determines whether a meeting with student is necessary. (R000041 and 000297). If a meeting with the student is warranted, the Committee delivers notice to the student. (R000041 and 000297). The Committee determined that Mr. Mahaffey's presence was necessary and gave him notice of this prior to his hearing before the Committee in 2012. (R000244).

Therefore, the COM never deviated from its established procedures for dismissing a student on probation, where the language of the handbook provided for immediate dismissal without being called to any hearing. Still Mr. Mahaffey met with two members of the Promotion and Matriculation Committee regarding the Committee's review of his professionalism. Mr. Mahaffey was then provided further opportunity to present any mitigating evidence at his appeal. In fact, the COM gave

Mr. Mahaffey more process than he was allowed under the Student Handbook as a student on probation facing a review of his professional conduct.

The trial court considered these facts through the language of *Beauchene*. (T51-55). Chancellor Doleac found that William Carey University did not deviate from its procedures, as established in the Student Handbook. (T53:8-29, 54:6-15, and 55:1-19). Chancellor Doleac specifically found that there was substantial evidence of Mr. Mahaffey's unprofessional conduct and that the University's decision to dismiss Mr. Mahaffey was fully justified. **(T52:28-53:8, 54:1-6, 54:16-24, and 55:9-19).**

The trial court properly ruled that William Carey University did not act arbitrarily or capriciously in its dismissal of Mr. Mahaffey. (T56:1-11). The University dismissed Mr. Mahaffey for unprofessional behavior after multiple chances over three years. William Carey, as represented by the faculty and administration of the COM, acted at all times according to the Student Handbook in disciplining Mr. Mahaffey, and its actions were neither arbitrary nor capricious. In the absence of any genuine issue of material fact, the trial court properly found that the University was not arbitrary or capricious in dismissing Mr. Mahaffey.

VI. CONCLUSION

The facts before the trial court demonstrated that William Carey University acted with great diligence to allow Mr. Mahaffey to remain a student. Yet Mr. Mahaffey continually violated the University's professionalism standards and the instructions of the faculty and administration. After multiple opportunities for Mr. Mahaffey to correct his behavior, Mr. Mahaffey's conduct reached its nadir during his pediatrics rotation. Mr. Mahaffey's behavior during this rotation and his submission of fabricated procedures logs were violations of the COM's standards of professionalism

during Mr. Mahaffey's probation which warranted his dismissal.

Mr. Mahaffey is judicially estopped from arguing any genuine issue of material fact in light of his cross motion for summary judgment. Mr. Mahaffey admitted that the Student Handbook, the alleged contract at issue, provided that any violation of the university's standards of professionalism would lead to immediate dismissal. The record supports the trial court's conclusion that the COM did not deviate from its established procedure in dismissing Mr. Mahaffey. The record, including the sworn Affidavits of those involved in the discipline of Mr. Mahaffey, shows that there was substantial evidence to support Mr. Mahaffey's dismissal.

Mr. Mahaffey's dismissal was not arbitrary and capricious. William Carey University properly dismissed Mr. Mahaffey for his repeated and flagrant violations of the university's standards of professionalism. The process afforded Mr. Mahaffey shows that William Carey University did not act arbitrarily or capriciously in dismissing Mr. Mahaffey. Accordingly, the trial court properly granted summary judgment in favor of William Carey University.

This the 29th day of January, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Heber Simmons III, hereby certify that on this day I electronically filed the Brief of Appellee with the Clerk of the Court using the MEC system, which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed the document by United States Postal Service to the following:

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This the 29th day of January, 2015.

/s/ Heber Simmons III
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